THE HON'BLE MR. JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.20409 of 2006

Date:19.11.2007

Between:
Kakarla Gangapati Chennaiah and 153 others.

...
Petitioners

AND
Government of Andhra Pradesh, reptd., by
its Secretary, Irrigation and Command Area
Development Department, Secretariat, Hyderabad and
another.

... Respondents.

Counsel for the petitioners: Sri D.Kodandarami Reddy.

Counsel for the respondents: Asst. Govt. Pleader for Land Acquisition.

-

-

-

-

-

-

-

-

-

-

-

-

_

HONOURABLE MR.JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.20409 of 2006

ORDER:-

This Writ Petition is filed for a Writ of Mandamus to declare the action of the respondents in not re-determining the compensation under Section 28-A of the Land Acquisition Act, 1894 (for short "the Act"), as illegal and arbitrary. The petitioners also sought for a direction to the respondents to re-determine the compensation in respect of their lands situated in Reach No.18 of Juvvalapalli village, Gopavaram Mandal, Kadapa District on par with that of the lands covered by O.P.No.80/86 on the file of the Court of the Subordinate Judge, Rajampet, Kadapa District.

A perusal of the affidavit filed in support of the Writ Petition and the material on record shows that certain lands of the petitioners were acquired by the respondents under notification dated 5-1-1978 issued under Section 4(1) of the Act. The lands of the petitioners were included in Reach No.18 and Award dated 30-8-1979 was passed. At the instance of one of the land owners, reference under Section 18 of the Act was made, which was numbered as O.P.No.80 of 1986 on the file of the Court of the Subordinate Judge, Rajampet, Kadapa District (hereinafter referred to as "the Civil Court"). By order dated 29-4-1987 the Civil Court has partly enhanced the compensation. In the affidavit, the petitioners claim that they filed copy application on 13-7-1987, the Civil Court made the certified copy ready on 18-9-1987 and delivered the same on the same day. It is further averred that on 23-9-1987 the petitioners' counsel sent their

applications under Section 28-A of the Act for re-determination of the compensation in terms of order dated 29-4-1987 passed by the Civil Court in O.P.No.80 of 1986 and that the respondents received those applications on 23-9-1987. Since the respondents have not passed any orders on the applications of the petitioners, they filed the present Writ Petition.

The Special Deputy Collector (Land Acquisition), Soma Sila Project, Unit-IV, Rajampet, who is respondent No.2 herein, filed a counter-affidavit, in which it is admitted that the petitioners' lands were acquired and that they received compensation under protest. It is also admitted that L.A.O.P No.80 of 1986, which was referred to at the instance of other land owners, was disposed of on 29-4-1987. It is stated that against the said order in L.A.O.P.No.89 of 1986, the Government filed A.S.No.1598 of 1997, which was dismissed on 27-8-2004. Respondent No.2 further admitted that applications filed under Section 28-A of the Act were found, after a search, in their office, but the said applications do not contain the signature in token of receipt of the same in their office and that they have not been entered in the Personal Register or in 28-A Register of their office and that the Special Collector, GNSS, Kadapa is conducting enquiry regarding the genuineness or otherwise of the said applications. It is, therefore, stated in the counter-affidavit that necessary action will be taken after completion of the enquiry.

Heard the learned counsel for the petitioners and the learned Assistant Government Pleader for Land Acquisition.

Section 28-A of the Act gives an opportunity to the

owners of the lands covered by a common notification to move the Collector within three months from the date of receipt of the Award of the Court to re-determine the compensation as fixed by the Civil Court in respect of the lands covered by the same notification. This provision enables the owners of the lands, who have not sought for reference under Section 18 of the Act for enhancement of compensation, to seek the same quantum of compensation as fixed by the Civil Court in respect of other lands covered by the same notification. The said provision, however, prescribes time limit of three months to apply for redetermination. Therefore, the *sine qua non* for the owner, whose land is acquired, is to prove to the satisfaction of the Collector that he made an application within the time stipulated by the statutory provision. In view of the stand taken in the counter-affidavit - that due to certain features, such as, the signature in token of receipt of the applications was not found and entries were not made in the personal register or 28-A Register the Special Collector, G.N.S.S., Kadapa has been conducting enquiry - I am not inclined to go into the merits of the claim of the petitioners, viz., whether they have filed their applications within time and they are in order. Since this claim falls in the realm of disputed fact, it is appropriate for the Special Collector, G.N.S.S., Kadapa to decide the issue at the earliest possible time, if necessary, after giving notice to the petitioners. After due verification, he shall send a report to respondent No.2 on the issue whether the petitioners made their applications within the time stipulated under Section 28-A of the Act or not. He shall complete this exercise within a period of three months from the date of receipt of a copy of this order;

and that depending upon the opinion of the Sub-Collector, G.N.S.S., Kadapa, respondent No.2 shall pass final orders under Section 28A of the Act, within a period of three months thereafter, either granting or refusing to grant relief to the petitioners.

Subject to the above observations, the Writ Petition is disposed of.

C.V.NAGARJUNA REDDY,J
19-11-2007

MNR